



Report to Congress:
Steps Taken and Progress of
Department of Defense
Plan for the
Personnel Management System
as Authorized by
Section 9902(a) of Title 5, United States Code,
as Amended by Section 1113(d) of
the National Defense Authorization Act for
Fiscal Year 2010 (Public Law 111-84)

October 2010

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Introduction

This report is being provided pursuant to the National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84, section 1113(e)(2):

REPORTS.—The Secretary of Defense shall provide a report to the covered committees (as defined by subsection (g)(6)) —

(2) no later than 12 months after [the] date of enactment [of this Act], a plan for the personnel management system¹ as authorized by section 9902(a) of title 5, United States Code, as amended by this section, which plan shall not take effect until 90 days after the submission of the plan to Congress

The covered committees as defined by subsection (g)(6) to receive the report are:

DEFINITIONS.—For purposes of this subsection, the term "covered committees" means—

- (A) the Committees on Armed Services of the Senate and the House of Representatives;
- (B) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (C) the Committee on Oversight and Government Reform of the House of Representatives.

This report describes the steps taken and progress of the development of the new DoD performance management system pursuant to section 1113(d) of NDAA 2010, and does not constitute the Department's plan for the system referenced in section 1113(e)(2).

¹ Section 9902(a) of title 5, U.S.C., as amended by section 1113(d) of NDAA 2010, requires the Secretary of Defense, in coordination with the Director of the Office of Personnel Management, to promulgate DoD regulations for a fair, credible, and transparent performance appraisal system that provides for linking performance bonuses and other performance-based actions to employee performance appraisals, ensures on-going performance feedback throughout the appraisal period, and includes performance assistance plans, hereafter referred to in this report as the new (or new DoD- wide or new enterprise-wide) performance management system.

Executive Summary

Sections 1113(b) and (c) of the National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010), Public Law 111-84 enacted on October 28, 2009, repealed the statutory authority for the Department of Defense (DoD) National Security Personnel System (NSPS) and directed the Secretary of Defense to begin no later than six months after enactment such actions as necessary for the orderly termination of NSPS and conversion of all 226,000 employees and positions under NSPS to the statutory pay and personnel system that last applied, or that would have applied if NSPS had never been established, without loss of or decrease in pay, by not later than January 1, 2012.

Section 1113(d) amended section 9902(a) of title 5, United States Code (U.S.C.), to require the Secretary, in coordination with the Director of the Office of Personnel Management (OPM), to develop a new performance appraisal system that links employee bonuses and other performance-based actions to performance appraisal of DoD civilian employees, ensures ongoing performance feedback throughout the appraisal period, and includes plans designed to assist employees with job performance, hereafter referred to in this report as the new (or new DoD-wide or new enterprise-wide) performance management system.

DoD established the NSPS Transition Office (NSPSTO) to provide overall management and direction of—

- NSPS transition activities; and
- Development of the new personnel authorities relating to performance management, workforce incentives, and hiring flexibilities identified in section 1113(d) of NDAA 2010.

The new enterprise-wide performance management system will replace the many performance management systems now operating in DoD. The system can be innovative: section 1113(d) gives the Secretary, in coordination with the Director of OPM, authority to waive the requirements of chapter 43 of title 5, U.S.C., on performance appraisal (with certain exceptions) and the implementing regulations promulgated by OPM.

Executive Order (E.O.) 13522, “Creating Labor Management Forums to Improve Delivery of Government Services,” allows employees and their union representatives to have pre-decisional involvement in decisions relating to all workplace matters to the fullest extent practicable. Section 1113(d) of NDAA 2010 requires that the development, design, and implementation of the new DoD performance management system be subject to collective bargaining obligations under chapter 71 of title 5, U.S.C., and specifies criteria for use of the system, including that it cannot be implemented until 90 days after the Department submits a plan for the system to the covered committees. Pre-decisional involvement of the unions is in progress.

Report

The National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010) directed the Secretary of Defense, in coordination with the Director of the Office of Personnel Management (OPM), to promulgate regulations providing for—

- A fair, credible, and transparent performance appraisal system for employees.
- A fair, credible, and transparent system for linking employee bonuses and other performance-based actions to performance appraisals of employees.
- A process for ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period and setting timetables for review.
- Development of “performance assistance plans” that are designed to give employees formal training, on-the-job training, counseling, mentoring, and other assistance.

The Secretary, in coordination with the Director of OPM, is authorized to waive the requirements for performance management found in chapter 43 of title 5, United States Code (U.S.C.) (except for those related to establishment of performance appraisal systems under section 4302 and appeals of actions based on unacceptable performance to the U.S. Merit Systems Protection Board under section 4303(e)) and the Government-wide implementing regulations administered by OPM.

Executive Order (E.O.) 13522, “Creating Labor Management Forums to Improve Delivery of Government Services,” requires Department heads to “allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. section 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment....”

NDAA 2010 specifies that the regulations promulgated for the new performance management system are DoD regulations. The design and implementation of the system are subject to collective bargaining obligations under chapter 71 of title 5, U.S.C.; and implementation cannot occur until 90 days after DoD submits its plan to the covered committees. Criteria for use of the new system (and flexibilities related to appointments, reported separately) are defined in NDAA 2010 as follows:

- 1) Adhere to merit principles set forth in section 2301 [of title 5, U.S.C.];
- 2) Include a means for ensuring employee involvement (for bargaining unit employees, through their exclusive representatives) in the design and implementation of such system;

- 3) Provide for adequate training and retraining for supervisors, managers, and employees in the implementation and operation of such system;
- 4) Develop—
 - a. A comprehensive management succession program to provide training to employees to develop managers for the agency; and
 - b. A program to provide training to supervisors on actions, options, and strategies a supervisor may use in administering such system;
- 5) Include effective transparency and accountability measures and safeguards to ensure that the management of such system is fair, credible, and equitable, including appropriate independent reasonableness reviews, internal assessment, and employee surveys;
- 6) Utilize the annual strategic workforce plan, required by section 115(b) of title 10; and
- 7) Ensure that adequate agency resources are allocated for the design, implementation, and administration of such system.

There are many performance management systems now operating in the DoD Components². These include pass-fail systems where no distinctions are made between high and minimally acceptable levels of performance, NSPS where distinctions are made between different levels of performance, and other multi-level systems where experience shows that most employees get the highest rating. In developing the new system, representatives of DoD management, the DoD unions, and OPM are exploring experiences with these systems and ideas about approaches.

The Deputy Secretary of Defense established the DoD NSPS Transition Office (NSPSTO) and appointed its director in January 2010, under the auspices of the Under Secretary of Defense for Personnel and Readiness. The Director's responsibility is to provide overall management and direction to (1) the transition of some 226,000 employees from NSPS to the appropriate successor statutory pay and personnel system by not later than the January 1, 2012, statutory deadline, with no loss of or decrease in pay, consistent with NDAA 2010 requirements; and (2) the design and development of the personnel authorities for performance management, workforce incentives, and hiring flexibilities identified in section 1113(d) of NDAA 2010.

In February, the NSPSTO Director made a courtesy call on the Director of OPM. The two directors discussed OPM-announced Government-wide civil service reform vis-à-vis the DoD-unique personnel authorities granted by Congress in NDAA 2010. There was agreement that DoD and OPM would be mutually supportive and work together on their respective initiatives.

² DoD Components are the Military Departments, Combatant Commands, and DoD Fourth Estate Entities. The DoD Fourth Estate consists of the Office of the Secretary of Defense, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in DoD that are not in the Military Departments or the Combatant Commands.

In March, the NSPSTO Director proposed a conference to be held in April to bring together a diverse group, including employees, managers, supervisors, labor partners, OPM, and other key stakeholders, to participate in the design and development of the new Department-wide civilian personnel initiatives, including a new performance management system, as authorized by NDAA 2010. When the NSPSTO Director met with union representatives to discuss the April conference, the unions expressed their desire to be included in the planning for a conference of this nature.

As it begins to develop the new authorities, the Department has been mindful of its obligation to work with exclusive representatives of DoD employees, involve the workforce, and not constrain development of new systems and processes. In the interest of building an effective relationship between management and labor, the conference planned for April was postponed to give time for further collaborative discussions between labor and management with respect to a pre-design conference to help identify broad concepts for the NDAA 2010 personnel authorities. A group comprised of representatives from the NSPSTO, DoD Components, unions, OPM, and Federal Managers' Association (FMA) was established to plan the pre-design conference. Communications continued through the spring, and a facilitated off-site meeting of the conference planning group was held over two days in late June. The planning group developed the purpose statement, draft agenda, and desired outcomes for the conference. It was agreed there would be 200 participants (100 designated by labor and 100 designated by DoD management), no observers, and two contract facilitators.

During July and into late August, the planning group continued refining the pre-design conference agenda and logistics details, including venue and dates, through e-mails and telephonic conference calls. The first mutually acceptable date for the pre-design conference was September 20 through 23, 2010. The planning group finalized the detailed agenda and related materials/handouts in early September. Copies of the agenda and handouts were mailed to participants in advance of the conference. A copy of the final agenda is at Appendix 1.

The planning group named the conference and identified its theme – *New Beginnings: Exploring Ideas, Information, and Insights in Partnership for a Working Defense*. The agreed upon outcomes were:

- a) Exploring ideas, information, and insights
 - a. Get as much input as possible.
 - b. Create an opportunity to share your ideas with others' ideas.
 - c. Get ideas, information, and insight that others can draw upon.
- b) Working in partnership
 - a. Good representation of different perspectives – good ideas/dialog.

- b. Parties gain the perspectives of each other and their different goals – life experiences.
 - c. Diversity – gain different perspectives.
- c) Creativity
 - a. Loose environment to be creative within.
 - b. The more creativity, the better.
 - c. Credible and cost effective system.

The NSPSTO hosted the *New Beginnings Conference* September 20-23, 2010, in Los Angeles, CA. The conference brought together individuals representing diverse stakeholder groups (e.g., DoD unions, managers, Federal Managers' Association, OPM, Merit Systems Protection Board) to explore information, insights, and ideas on, among other things, civilian employee performance management and recognition.

The *New Beginnings Conference* was well attended. The duration was two and one-half full days of meetings and breakout sessions. Ground rules included that DoD was not looking for consensus, but for the free flow of ideas; and everyone had a voice in the conversation. There was lively discussion and a high energy level throughout the conference. Evaluations were overwhelmingly positive, and attendees wanted the opportunity to provide additional insights and perspectives.

The first full day of the conference was dedicated to performance management. The topic was introduced jointly by a DoD management representative and a union representative. The management spokesperson presented an overview of the current definition and tenets of performance management under chapter 43 of title 5, U.S.C., and part 430 of title 5, Code of Federal Regulations; and the mandate in section 1113(d) of NDAA 2010 for the development of a new DoD performance management system. The labor spokesperson presented the unions' perspective on the importance and value of performance management. These presentations established a common understanding of performance management among all participants on which to base their free flow of ideas and discussions.

Nearly 200 participants were seated at 25 tables with equal numbers of representatives from labor and management at each table. Because there are so many different performance management systems in DoD, participants were given the opportunity to learn from each other about some of the different approaches to performance management that have been used in the Department. Participants were asked to be curious about the differences and note the similarities in approach. The goal of this exercise was to gain perspectives and generate ideas that could later (after the conference) be considered for the design of the new system.

Following the report from each table on current performance management approaches within DoD, participants spent the rest of the day (approximately six hours) discussing five focus areas of performance management: (1) employee/supervisor communications/relationship; (2) professional development; (3) organizational culture; (4) employee recognition and rewards; and (5) performance appraisal systems. Questions that were developed beforehand by the joint labor and management conference planning group to guide table discussions of each of the focus areas were provided. A copy of the discussion questions is at Appendix 2. Participants were not restricted to the questions, however, and could also discuss other aspects of performance management.

Each table designated a recorder who captured the recommendations of that table in each of the five focus areas. Charts summarizing each table's thoughts were posted to the wall for all conference participants to view. Time was dedicated during the morning of the second day of the conference for a review of some of the recurring themes from the previous day.

The focus area questions and subsequent discussions generated over 800 recommendations in the area of performance management. The NSPSTO compiled a report on the conference and sent it to all participants on October 20, 2010. The report includes the conference agenda, materials, and all recommendations received from participants during the conference. The recommendations will be provided to the performance management design team to be comprised of management, non-represented employees, and union representatives, for consideration as they meet to develop recommendations for the new system. The conference report was also posted to the NSPSTO website home page for public viewing.

The *New Beginnings Conference* has generated additional positive results. Articles have appeared on the websites of the National Federation of Federal Employees, Affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO; and the National Association of Government Employees. Both noted that while there was skepticism at first with respect to the conference, any concerns were allayed when it became evident that DoD was sincere in seeking candid discussions, ideas, and input from labor and management on the NDAA 2010 personnel authorities. The conclusion was that DoD "delivered on what was promised."

While the Department is mindful of the requirement to report to the covered committees a plan for a new DoD-wide performance management system within 12 months following enactment of NDAA 2010, it views continuing the good will and growing positive relationship between labor and management that started in the spring of 2010 and grew during the *New Beginnings Conference* in September, as essential to the development of a jointly-created system that will be in the best interest of the Department and its employees. To that end, DoD, in coordination with OPM, will continue to engage and seek collaboration with labor as we move ahead on the new personnel authorities.

The NSPSTO Director has requested the unions to begin collaborative discussions with the NSPSTO on the composition of the teams that conceptually would take ideas from the pre-design conference and design the new personnel authorities. The Director and labor representatives are

exploring dates to meet and determine next steps. This includes determining such matters as the composition of the performance management design team, team meeting dates, timelines, consistent with Executive Order 13522 requirements for involving employees and their union representatives in workplace matters and the NDAA 2010 provision that labor and management work together in the design and implementation of a new enterprise-wide performance management system. The design team may convene in early FY2011 and meet for some time before presenting its recommendations for the design of the new DoD-wide performance management system. The Department will report the plan for the new system to the covered committees when it is finalized.



New Beginnings Conference September 20 – 23, 2010

Agenda

Monday, September 20, 2010

12:00pm – 5:00pm **Registration – Catalina Foyer**

5:00pm – 6:00pm **Greeting and Orientation – Catalina Ballroom** (open seating)

Tuesday, September 21, 2010

7:00am – 8:00am **Registration – Catalina Foyer**

8:00am **“Getting Started” – Catalina Ballroom** (red dot)
Welcome and Expectations for the Conference

Conference Purpose and Outcomes

Agenda and Norms

Getting Connected

Spotlight on Performance Management

- Background/Legislation/Regulations
- Exploring the Diversity that is DoD – The Different Systems We Work Under Today
- Generating our Ideas for each of the Focus Areas

12:00pm **Lunch – Plaza Deck**

1:00pm Spotlight on Performance Management (continues)

- Generating Ideas (continues)
- Insights on Performance Management

Feedback on the Day and Advice for Tomorrow

5:00pm Close

5:30pm **Reception – Hollywood Ballroom**

Wednesday, September 22, 2010

8:00am
(blue dot)

“Exploring Ideas and Insights” – Catalina Ballroom (blue dot)

Welcome Back – Summary of Feedback

Getting Re-connected

Spotlight on Workforce Incentives

- Background/Legislation/Regulations
- Move to Breakout Rooms
- Generating our Ideas

12:30pm

Lunch – Plaza Deck

1:30pm
(blue dot)

Spotlight on Workforce Incentives – Catalina Ballroom

- Summaries from the Breakouts

Spotlight on Hiring Flexibility (green dot)

- Background/Legislation/Regulations
- Generating our Ideas
- Consolidating our Ideas & Insights about Hiring Flexibility

Feedback on the Day and Advice for Tomorrow

5:00pm

Close

Thursday, September 23, 2010

8:00am
(red dot)

“Finalizing our Input & Next Steps” – Catalina Ballroom

Welcome Back – Summary of Feedback

Re-connecting with our Original Tablemates

Going Deeper and Finalizing Our Input – (The View through our Magnifying Glass)

What do We Communicate Back Home? Our Elevator Speech

Next Steps and Closing Remarks

Feedback on the Conference

12:00pm

Close

Spotlight on Performance Management: Set of Focus Area Questions

Focus Area 1 – Employee/Supervisor Communications/Relationship

- Employee performance objectives – what is the best approach for the employee and their supervisor to developing meaningful objectives?
- How much time and effort should the employee and the supervisor put forth to engage in formal and informal performance discussions? What accountability measures are necessary to ensure the time/effort?
- How can there be, or should there be, mutual accountability between an employee and their supervisor in the accomplishment of goals/objectives? If there should be, then how is it developed?

Focus Area 2 – Professional Development

- How can the development and execution of career roadmaps and the use of Individual Development Plans (IDPs) become practical and useful tools in enhancing employee performance management?
- What can be done to enhance the effectiveness of supervisors, whether new or experienced?
- Should standard DoD supervisory training/certification be a prerequisite prior to becoming a supervisor and/or being authorized to rate employees?
- Should continuing education or requalification be required?
- Should the supervisory probationary period be more aggressively managed to ensure supervisor performance meets expectations?
- Should supervisors be held to higher level performance standards/accountability?

Focus Area 3 – Organizational Culture

- How can a culture of high performance be developed and sustained?
- How can a culture of transparency and fairness become reality within an organization?
- How do you develop an organizational culture where the “good old boy” syndrome does not only not exist but is actively discouraged?
- How do you move beyond biases of previous systems (whether good or bad)?

**Spotlight on Performance Management:
Set of Focus Area Questions**

- Should the success of an organization in meeting its mission be a factor in employees' performance ratings?

Focus Area 4 – Employee Recognition and Rewards

- How can programmed pay increases like within-grade increases become a more meaningful aspect of a performance management system?
- What are the attributes of an effective recognition and rewards program?
- How can the management of bonus funds be enhanced to better reward performance?

Focus Area 5 – Performance Appraisal System

- What should the purpose of a performance appraisal system be (to motivate, rate, reward, reduction-in-force criteria, etc.)?
- What needs to be incorporated into the design of a performance appraisal system that ensures transparency, fairness, ease of use; demonstrates distinctions in levels of performance; links to organizational mission; and values similar work/performance at different locations?
- What are the desired attributes of a performance appraisal system?
- Should a performance appraisal system be formal or informal or some combination of the two approaches?
- Can there be a “one size fits all” for a DoD enterprise performance appraisal system? How much flexibility should exist and at what level?
- Should supervisors and employees have different performance appraisal systems or criteria?

